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MICHAEL RODAK, JR., C

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1974

No. 74-612

Pat Pinnell ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

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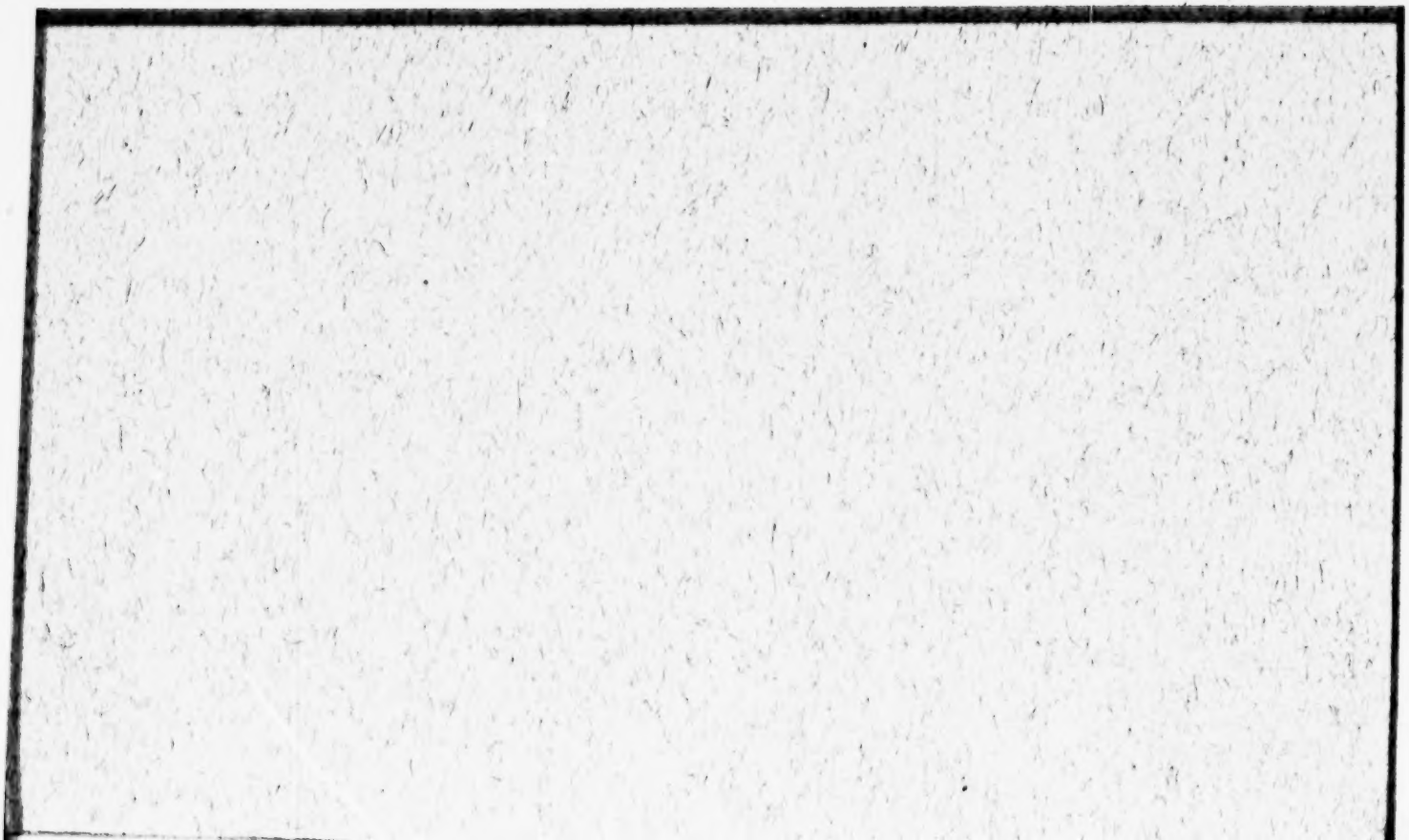

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OPINION BELOW

The opinion of the Arkansas Supreme Court is reported as *Kerr and Pinnell v. State of Arkansas*, 256 Ark. 738, 512 S.W.2d 13 (1974) and is reproduced as an appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

(1) Whether evidence introduced by the State at Petitioner's trial should have been excluded under 18 U.S.C. §2511 (2) (c).

(2) Whether Petitioner was denied adequate representation at trial in violation of his rights under the Sixth Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) 18 U.S.C. §2510 et seq.

(2) Sixth Amendment to the Constitution of the United States.

STATEMENT

Petitioner Pinnell and Donald Wayne Kerr were tried in the Circuit Court of Sebastian County, Arkansas for the crime of assault with a deadly weapon and were convicted on June 26, 1973. Pinnell was fined one-thousand dollars ($1,000) and sentenced to one (1) year in jail.

Prior to the indictment of Kerr and Pinnell, one Glen Weston Chamblee was convicted of the same crime. The record indicates that Chamblee contacted the prosecuting attorney while he was serving a 90 day jail sentence for possession of a prohibited weapon and offered his assistance in obtaining evidence against the Petitioner and Kerr.

In cooperation with the police, Chamblee was fitted with a concealed microphone by which two conversations with Pinnell were transmitted to a remote receiving device and recorded on tape. Transcriptions of these recorded conversations, and the tapes themselves, were introduced into evidence at Pinnell's trial.

ARGUMENT

I.

PETITIONER'S RIGHTS WERE NOT VIOLATED BY THE INTRODUCTION OF EVIDENCE OF HIS CONVERSATIONS WITH CHAMBLEE.

Petitioner argues that Chamblee's cooperation with the police was coerced by an offer of leniency, rendering the evidence gained through Chamblee's efforts inadmissible under 18 U.S.C. §2511 (2) (c). That section reads as follows:

> "It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or one of the parties to the communication has given prior consent to such interception."

It is undisputed that Chamblee was a party to the conversations in question. There is no indication that his participation was less than completely voluntary. As the Arkansas Supreme Court noted at some length, Chamblee offered his assistance of his own free will, *without having been approached by the police*, and received no promise of leniency in return.

Clearly, Chamblee could have (and in fact did) testify regarding his conversations with the Petitioner. The tape recordings were simply corroborating evidence.

It is argued that *Laughlin v. United States*, 344 Fed. 2d 197 (C.A.D.C. 1965) and *United States v. Zarkin*, 250 Fed. Supp. 728 (D.C. Dist. 1966) present conflicting

interpretations of this area of federal law. It is the position of Respondent that the cited decisions are totally irrelevant to the case at bar. *Zarkin, supra,* and *Laughlin, supra,* both involved situations where evidence of coercion existed.

Respondent would argue further that the cited decisions are not in conflict and that if they *were* in conflict that fact would have no relevance to the issues herein.

Again, it must be noted that Chamblee himself testified that he was not "coerced" and that the record contains not a shred of evidence to the contrary. The Arkansas Supreme Court noted:

> "We are of the opinion that the evidence supports the State's position that Chamblee acted voluntarily."

II.

PETITIONER WAS NOT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.

Petitioner argues that a review of the record indicates that Pinnell was denied the effective assistance of counsel at his trial. The Arkansas Supreme Court reviewed the trial record at length, noting, inter alia, that Pinnell's counsel had been employed by the Petitioner more than six months before the trial and that he had filed several pre-trial motions.

After noting that mere trial tactics may not be reviewed in hindsight in order to establish ineffective assistance, the Arkansas court held that the record did not

indicate that the trial was "reduced to a sham, farce or mockery of justice" so as to shock the conscience of the court. See, *Franklin and Reid v. State*, 251 Ark. 223, 471 S.W.2d 760; *Williams v. Beto*, 354 Fed. 2d 698, 704 (5th Cir. 1965); *Bell v. State of Alabama*, 367 Fed. 2d 243, 247 (5th Cir. 1966), cert. denied 386 U.S. 916, 87 S. Ct. 859, 17 L. Ed. 2d 788 (1967); *Cardarella v. United States*, 375 Fed. 2d 222 (8th Cir. 1967), cert. denied 389 U.S. 882, 88 S. Ct. 129, 19 L. Ed. 2d 176 (1967).

Respondent would submit that the decision below is clearly correct and conflicts with no federal statute or decision. No substantial federal question has been raised by the Petition and no basis has been presented for the granting of certiorari.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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